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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,270	08/19/2003	Remy Zimmermann	09623V-045300US	5170
20350 7590 02/09/2009 TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834				
EXAMINER				
SURVILLO, OLEG				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/644,270

Applicant(s)

ZIMMERMANN ET AL.

Examiner

OLEG SURVILLO

Art Unit

2442

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 4-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CD/CD)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission dated January 23, 2009 has been entered.

Response to Amendment

2. Claims 1 and 4-21 remain pending in the application. No claims are currently amended. Claims 2 and 3 remain canceled. No new claims are added.

Response to Arguments

3. With regard to the applicant's remarks dated December 29, 2008:
regarding the rejection of claims 1, 11, and 21 under 35 U.S.C. 103(a) as being unpatentable over Best, JR et al. in view of Mora, applicants' arguments have been fully considered but they are not persuasive. In particular, applicants argue regarding par. [0027], [0031], and [0034] of Mora that "*neither a received e-mail nor a calendar entry is a piece of multimedia information that includes one of audio information, still image information, and video information*" and that "*presence detection in Mora is not discussed for changing status as recited in claim 1*". Examiner disagrees with

applicants' argument that Mora teachings in at least par. [0027], [0031], and [0034] do not meet the claim limitations. In particular, Mora clearly shows in at least par. [0027], [0031], and [0034] that multimedia information (i.e. motion event information) is used to determine status related to mere presence and beyond that, possibly in combination with other data, such as from the PIM 124 and manual user input. In particular, Mora shows at Fig. 2 that Messenger Assistant 122 communicates directly with the PIM 124. A presence detection application 129 passes presence information from presence detection events to the Messenger Assistant 122. The Messenger Assistant 122 sends data to the PIM 124. Thus, Messenger Assistant 122, the PIM 124 and Presence Detection Application 129 are in communication with each other and the status "beyond mere presence" is based on at least one or more of the data objects received from the PIM 124 (PIM Event 138 at Fig. 3), Presence Detection Application 129 (Presence Event 140 at Fig. 3), and User Input 136 at Fig. 3. Therefore, the combination of Best and Mora teachings meet the claim limitations and the rejection is maintained.

Applicants are reminded that the limitation of "the multimedia information comprises at least one of audio information, still image information, and video information" is open-ended, that is it may include other information such as PIM entries and user input in Mora as part of "multimedia information". There is nothing in the claim that would limit the multimedia information to at least one of audio, still image and video information. In addition, there is nothing in the claim that would require determination of user status be based exclusively on the captured multimedia information, wherein the multimedia information is limited to audio, still image, video, or a combination of audio,

still image and video information, as discussed above. Such that, determination of the user status beyond mere presence can be based on combination of at least one of audio, still image and video information and some other data, such as PIM entries and user input in Mora. Only if each of independent claims is amended to limit multimedia information to recited audio, still image, video information, or a combination thereof, and to further specify that status of the user is determined exclusively based on said multimedia information can applicants' arguments be held as persuasive. If applicants choose to amend the claims by replacing "comprises" with "consisting of", applicants are advised to review MPEP section 2111.03 on transitional phrases to determine how transitional phrase "comprising" in the preamble may affect claim scope in combination with transitional phrase "consisting of".

As to any arguments not specifically addressed, they are the same as those discussed above.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 1 and 21 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

As to claims 1 and 21, use of the word "system" does not inherently mean that the claim is directed to a machine. Only if at least one of the claimed elements of the system is a physical part of a system can the system as claimed constitute part of a

device or a combination of devices to be a machine within the meaning of 35 U.S.C. 101.

In the instant case, the system comprises an information capture module, an information extraction and analysis module, an information interpretation module, and an Application Program Interface module. The specification fails to provide a specific definition of either one of the modules as necessarily including some sort of hardware elements. It is noted that the fact that *"in one embodiment, the information capture module 210 includes the conventional components of a digital camera, which relate to the capture and storage of multi-media data"* as discussed at par. [0031] of the specification, does not necessarily limit the information capture module 210 to include conventional components of a digital camera. Thus, it would be reasonable to conclude that in at least one other embodiment, the information capture module includes only software application for capturing the multimedia information. Applicants are advised to amend claims 1 and 21 to further specify that the information capture module includes at least one of the hardware components, as discussed at par. [0031].

Therefore, claims 1 and 21 are directed to non-statutory subject matter.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 4-6, 9-12, 14-16, 18, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Best, JR. et al. (US 2005/0034147 A1) (hereinafter *Best*) in view of Mora (US 2004/0162882 A1).

As to claim 1, the preamble has been given patentable weight since the claim body refers back to the preamble. See “the IM application”, “the user”, and “the multimedia information” at lines 1-2 of the claim body.

As to claim 1, Best shows a system [Fig. 2A] for performing an action on an Instant Messaging (IM) application [in response to receiving a presence indication] (par. [0029]), wherein the performed action is based on multimedia information [presence indication], the system comprising:

an information capture module [presence detector (220)] that is capable of being used for capturing the multimedia information in the vicinity of a machine on which the user is using the IM application (par. [0009] l. 4-7, par. [0029] l. 21-25), wherein the multimedia information comprises at least one of audio information, still image information, and video information (par. [0023] l. 15-16);

an information extraction and analysis module [visual identification logic] that is communicatively coupled with the information capture module (par. [0023] l. 14-16) and is capable of being used for extracting relevant information from the captured multimedia information (par. [0023] l. 13-19); and

an information interpretation module that is communicatively coupled with the information extraction and analysis module [presence detector instructions (216)] that are capable of being used for interpreting the extracted and analyzed information for the

IM application to determine the presence of a user (par. [0028], par. [0009] l. 4-7), wherein the interpreted information is used for directing a launch of the IM application (par. [0029] l. 1-11).

Best does not show that the performed action in response to receiving a presence indicator is updating an IM application. In Best, the “performed action” is launching an IM application, in one embodiment, par. [0029] l. 1-11, and updating a presence database, in another embodiment, par. [0039].

Best also does not show determining a status of said user, wherein the interpreted information is used for updating the IM application to set forth said status of the user, and an Application Program Interface module for the IM application, communicatively coupled to the information interpretation module, for receiving the interpreted information and updating the IM application regarding the user when present, wherein the Application Program Interface module is configured to update the user’s status on the IM application.

Mora shows updating an IM application regarding a user of the IM application (par. [0024] l. 15-20, par. [0025] l. 1-2 and 18-22), wherein the updating is based on multimedia information [user input event, PIM event, motion event] (Fig. 3), wherein the multimedia information comprises at least one of audio information, still image information, and video information [motion event comprises video information] (par. [0022]).

Mora also shows determining a status of said user (par. [0020] l. 3-7, par. [0027]), wherein the interpreted information [availability and presence information] is

used for updating the IM application to set forth said status of the user (par. [0031] l. 5-17); and

an Application Program Interface module for the IM application [Messenger Assistant] for receiving the interpreted information and updating the IM application regarding the user when present [Messenger Assistant interfaces availability and presence information with that users' instant messaging capabilities, automatically indicates the users' availability state to others in real time] (par. [0020] l. 1-7, par. [0024] l. 15-20, par. [0031] l. 5-17),

wherein the Application Program Interface module is configured to update the user's status on the IM application (par. [0024] l. 15-20, par. [0025] l. 18-22, par. [0027] l. 16-21, par. [0031] l. 5-17).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system of Best by determining a status of the user and having an Application Program Interface module of Mora that is configured to update the user's status on the IM application in order to provide business associates with up to date personal status on IM application automatically and in real time in response to receiving availability and presence information of the user from various sources (par. [0012], [0020] in Mora).

As to claim 4, Best in view of Mora shows that the user's status is updated in a buddy window on the IM application (par. [0019], [0031] l. 5-17 in Mora).

As to claim 5, Best in view of Mora shows that the user's status comprises at least one of available, busy, on the phone, and away from the desk (par. [0025] l. 7-9, par. [0026] l. 7-9, par. [0027] l. 16-21 in Mora).

As to claim 6, Best in view of Mora shows that the Application Program Interface module [Message Assistant] (par. [0020] l. 1-7 in Mora) is capable of being configured to update the user's identity on the IM application [determining the identity of the user] (par. [0023] l. 16-19, par. [0035] in Best).

As to claims 9 and 14, Best shows employing motion detection techniques for extracting relevant information from the captured multimedia information for detecting motion (par. [0022] l. 10-24).

As to claim 10, Best shows employing face recognition techniques for extracting relevant information from the captured multimedia information (par. [0023] l. 3-5 and 17-19).

As to claim 11, the preamble has been given patentable weight since the claim body refers back to the preamble. See "the captured multimedia information" at line 1, "the IM application" at line 4, and "said user" at line 5 of the claim body.

As to claim 11, Best shows a method [Fig. 2A] for performing an action on an Instant Messaging (IM) application [in response to receiving a presence indication] (par.

[0029]) regarding a user based on captured multimedia information [presence indication], the method comprising:

receiving the captured multimedia information (par. [0028] l. 1-5) [wherein the multimedia information comprises video images] (par. [0023] l. 15-16), wherein the multimedia information comprises at least one of audio information, still image information, and video information (par. [0023] l. 15-16);

extracting and analyzing relevant information from the captured multimedia information (par. [0023] l. 13-19);

interpreting the analyzed information for the IM application [determining whether computer should take any action based on at least in part on the received information] (par. [0028] l. 5-8) to determine the presence of a user (par. [0028], par. [0009] l. 4-7, [wherein the interpreted information is used for directing a launch of the IM application] (par. [0029] l. 1-11).

Best does not show that the performed action in response to receiving a presence indicator is updating an IM application. In Best, the "performed action" is launching an IM application, in one embodiment, par. [0029] l. 1-11, and updating a presence database, in another embodiment, par. [0039].

Best also does not show determining a status of said user when present, providing the interpreted information to the IM application, and updating the IM application based on the provided information to set forth said status of the user.

Mora shows updating an IM application regarding a user of the IM application (par. [0024] l. 15-20, par. [0025] l. 1-2 and 18-22), wherein the updating is based on

multimedia information [user input event, PIM event, motion event] (Fig. 3), wherein the multimedia information comprises at least one of audio information, still image information, and video information [motion event comprises video information] (par. [0022]).

Mora also shows determining a status of said user when present (par. [0020] l. 3-7, par. [0027]), providing the interpreted information to the IM application (par. [0031] l. 5-17), wherein the interpreted information [availability and presence information] is used for updating the IM application to set forth said status of the user (par. [0031] l. 5-17).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Best by determining a status of the user when present, providing the interpreted information to the IM application, and updating the IM application based on the provided information to set forth said status of the user in order to provide business associates with up to date personal status on IM application automatically and in real time in response to receiving availability and presence information of the user from various sources (par. [0012], [0020] in Mora).

As to claim 12, Best in view of Mora shows all the elements, as discussed per claim 4, above.

As to claim 15, Best in view of Mora shows all the elements, as discussed per claim 6, above.

As to claim 16, Best in view of Mora shows all the elements, as discussed per claim 10, above.

As to claim 18, Best shows that updating is performed only after a user trigger [person approaching a computer (210) is detected by the presence detector (220) and GUI icon is changed in response to this user trigger] (par. [0028] and [0039]). It is being noted that even though Applicants consider "a user trigger" being "a detected gesture of the user to activate the status reporting feature" (see Reply filed on July 26, 2007 under Claim 18 arguments), no such limitation (gesture of the user) is being claimed, as per claim 18. As the result, "a user trigger" is being reasonably interpreted as "person approaching a computer" in Best reference. This interpretation is supported by the specification wherein it is stated: "... trigger events can include ... a user's approaching of the camera ..." (par. [0039] in the current specification).

As to claim 21, Best in view of Mora shows all the elements, as discussed per claims 1, 4, and 5, wherein claim 21 includes all the elements of claim 1 with addition of:

wherein the user's status is updated in a buddy window on the IM application (as discussed per claim 4);

wherein the user's status comprises at least one of available, busy, on the phone, and away from the desk (as discussed per claim 5).

8. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Best, JR. et al. in view of Mora in further view of Mastrianni et al. (US 2002/0114519 A1).

As to claim 7, Best in view of Mora shows all the elements except for logging out a previous user, and logging in the user on the IM application.

Mastrianni shows that updating the user's identity comprises logging out a previous user, and logging in the user [logging in the user at step (316) Fig. 3 and logging out the user at step (320) Fig. 3 wherein the previous user is the user that was previously logged in].

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system of Best in view of Mora by logging in and out the user in order to update the user's identity when the user walks away from computing device at step (320) in Mastrianni.

9. Claims 8, 13, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Best, JR. et al. in view of Mora and in further view of Toyama (US 2006/0193494 A1).

As to claims 8 and 13, Best in view of Mora shows all the elements except for employing face tracking techniques for tracking a face.

Toyama shows employing face tracking techniques for extracting relevant information from the captured multimedia information for tracking a face (par. [0034] I. 1-3, par. [0035]).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system and method of Best in view of Mora by employing face tracking techniques for extracting relevant information from the captured multimedia information for tracking a face in order to determine if the user is looking at the monitor and cease speech recognition if the user is turned away (par. [0035] in Toyama).

As to claim 19, Best in view of Mora shows all the elements except for the captured multimedia information (multimedia data) includes audio data.

Toyama shows that multimedia data includes audio data [speech] (par. [0035] I. 11-19).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Best in view of Mora by having the captured multimedia information include audio data in order to capture user speaking while facing the monitor (Toyama, par. [0035] I. 11-19).

10. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Best, JR. et al. in view of Mora and in further view of Harris (US 7,202,798 B2).

As to claim 17, Best in view of Mora shows that the status of said user comprises whether said user is on the phone (par. [0019] I. 16 in Mora).

Alternatively, Harris shows that the status of the user comprises whether said user is on the phone (col. 5 lines 46-67 and col. 6 lines 1-13) [wherein a miniature camera (605) takes a real time image of the user (610) and automatically recognizes

portable telephone use. Upon detecting a phone usage, a signal is sent to an attendant notifying of phone usage by the user (610)].

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Best in view of Mora by having the status of the user comprise whether said user is on the phone in order to notify User B (in Best reference or "attendant" in Harris reference) that User A (in Best reference or user (610) in Harris) is on the phone (par. [0039] in Best, col. 6 lines 46-67 in Harris).

11. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Best, JR. et al. in view of Mora and in further view of Johnson et al. (US 5,349,662).

As to claim 20, Best in view of Mora shows that the status of said user being indicated as busy if said user is detected to be engaged in one of the predetermined appointment events (par. [0032] l. 1-12, Fig. 4B in Mora).

Best in view of Mora does not show that indication of status as busy is performed if said user is determined to be using a program other than IM or email.

Johnson shows determining if said user is using a program [a spreadsheet program] (col. 6 line 33) other than IM or email [User Activity Event Detection Process] (col. 6 lines 1-38, Fig. 2).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Best in view of Mora by having the indication of status as busy being performed if said user is determined to be using a program other than IM

or email in order to properly indicate the user status corresponding to the user activity event such as invocation of a spreadsheet program.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to OLEG SURVILLO whose telephone number is (571)272-9691. The examiner can normally be reached on M-Th 8:30am - 6:00pm; F 8:30am - 5:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Caldwell can be reached on 571-272-3868. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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